No. 71-676

In the Supreme Court of the United States

OCTOBER TERM, 1971

WILTON EUGENE COLEMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Eastern District of Tennessee, petitioner was convicted of conspiring to rob a federally insured bank, in violation of 18 U.S.C. 371, and sentenced to three years' imprisonment. The court of appeals affirmed (Pet. App. A), on the basis of the memorandum opinions of the district court denying petitioner's motion for a new trial (Pet. App. B) and certain pre-trial discovery motions (Pet. App. C).

The facts adduced at trial are not in dispute and are set forth in full in the district court's opinion denying the motion for a new trial (Pet. App. B, pp. A9-A11). Petitioner helped plan the robbery of the Hamilton Bank of Chattanooga, Tennessee, on February 12, 1970. Though he did not participate in the actual robbery, he furnished his co-conspirators with a key to the bank, where his wife worked, and information when maximum amounts of cash would be in the bank.

Petitioner contends that plain error occurred at the trial when the prosecutor, in his summation, misstated without objection the evidence presented by a certain witness. This contention was the basis for petitioner's motion for a new trial, and is answered in the thorough opinion of the district court denying that motion (Pet. App. B). We rely here on that opinion, as the court of appeals did, to show that the inaccuracies in the prosecutor's argument were insignificant and not prejudicial.

Petitioner also claims that the trial judge erred in the decision regarding his pre-trial motion that the government provide him with any exculpatory materials, as required by *Brady* v. *Maryland*, 373 U.S. 83. The government replied that it had no knowledge of any such evidence and, on the basis of this representation, the trial judge denied the motion (Pet. App. C). Petitioner asserts that, although he does not know of any specific evidence favorable to him that was withheld by the government, there must have been some, and that the trial judge had a duty to make further inquiries before accepting the govern-

ment's statement. This proposition was correctly rejected by the courts below.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1972.